

REMARKS

Thorough examination of the application is sincerely appreciated.

According to the Office Action, claims 1 and 3 were rejected under 35 USC 102(e) as being anticipated by U.S. Patent 6,891,804 (hereinafter "Hargrove"). Further according to the Office Action, claim 2 was rejected under 35 USC 103(a) as being obvious over Hargrove in view of U.S. Patent 6,041,051 (hereinafter "Doshi"). Still further according to the Office Action, claims 4 and 5 were rejected under 35 USC 103(a) as being obvious over Hargrove in view of U.S. Patent 6,976,163 (hereinafter "Hind"). In response, the rejections are respectfully traversed as lacking sufficient factual support.

Referring to paragraph 2 on page 2 of the Office Action, the examiner alleges, among other things, that Applicant's claimed feature of "the function modules (13 to 19) of the layer (12) lying above the bottom layer (2) jointly form an application interface which can process an application software of various manufacturer-dependent central monitoring systems" is disclosed in col. 2, lines 31-39 of Hargrove. Applicant's representative has reviewed the cited portions of the patent and failed to find such a disclosure there or anywhere else in the patent, contrary to the examiner's remarks. Those cited portions of Hargrove are reproduced below for the examiner's

convenience:

"The presentation layer is concerned with such functions as transformation of data encodings, so that heterogeneous systems may engage in meaningful communication.

At the highest, or application, layer are protocols that support specific applications. An example of such an application is the transfer of files from one host to another. Another application allows a user working at any kind of terminal or workstation to access any host as if the user were local ..."

It is respectfully submitted that the examiner is factually wrong. Nowhere in that portion or anywhere else in the patent does Hargrove show or teach, among other things, Applicant's claimed feature of the function modules of the layer lying above the bottom layer jointly form an application interface which can process application software of various manufacturer-dependent central monitoring systems, as recited in claim 1.

Hargrove is completely silent on function modules at the application interface layer. Hargrove discloses various functions, such as transformation of data encodings, at his presentation layer. Hargrove's presentation layer is completely different from Applicant's application interface layer for the following reason.

Hargrove's presentation layer contains functions that deal with transformation of data encodings. Hargrove's presentation layer functions do not form an application interface. Nowhere does Hargrove teach or suggest that those functions in his

presentation layer can process an application software of various manufacturer-dependent central monitoring systems, as recited in Applicant's claim 1. It is believed that such description of Hargrove's functions in the presentation layer cannot be found in the patent.

If the examiner believes otherwise, he is respectfully requested to provide an affidavit stating facts within his personal knowledge or prior art reference stating the same, because the statements in the Office Action can't be supported by the record.

It is unclear whether the examiner relies on personal knowledge of the facts or those of a skilled artisan. If this is the case, then "particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed." In re Kotzab, 1371. The MPEP provides guidelines for relying on official notice and personal knowledge, which the Examiner perhaps should follow in this case:

"When a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the applicant and other persons.

See MPEP §2144.03. If the rejection is maintained, it is respectfully requested that the examiner provide an affidavit stating facts within his personal knowledge or an affidavit by a skilled artisan.

According to the binding case law established by U.S. Court of Appeals for the Federal Circuit and its predecessor Court (as interpreted in Section 2131 of the MPEP), to anticipate a claim, the reference must teach each and every element of that claim. As discussed above, Hargrove is deficient in teaching each and every element of Applicant's claim 1. It is, therefore, respectfully submitted that independent claim 1 is not anticipated by Hargrove. Withdrawal of the rejection is respectfully requested, as it cannot be sustained legally.

With respect to claim 2-5, the examiner does not rely on Doshi or Hind to cure deficiencies in Hargrove as described above with respect to independent claim 1. Accordingly, claims 2-5 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein and not shown in Doshi and Hind. Applicant submits that the reason for the rejection of claims 2-5 has been overcome and respectfully requests withdrawal of the rejection and allowance of the claims.

In view of the above, it is respectfully submitted that

Hargrove, Doshi and Hind, whether alone or in combination, do not anticipate or render obvious the present invention because the prior art references fail to teach or suggest all of the features of the present invention, as discussed hereinabove.

An earnest effort has been made to be fully responsive to the Examiner's correspondence and advance the prosecution of this case. If there are any questions, the Examiner is respectfully requested to call the undersigned attorney at the number listed below.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

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